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Yuko Kubo

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EXAMINER

GWARTNEY, ELIZABETH A

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

01/05/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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ATTACHMENT TO ADVISORY ACTION

Applicants' amendment to the claims filed on 10 December 2009 has been fully considered but is denied entry for the following reasons:

First, the amendment raises new issues that require further consideration under 35 USC § 112 1st paragraph. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1 and 3 were amended to recite "wherein a content as a dry weight of the insoluble substance in the drink is from 0.1 to 0.6 wt%". While the specification describes a broad range of 0.1-1.2 wt% and several more narrow ranges including 0.2-0.9 wt%, 0.21-0.85 wt%, 0.25-0.8 wt% and from 0.3-0.6 wt% ([0011]), the specification does not provide support for a content as a dry weight of the insoluble substance in the drink of 0.1 to 0.6 wt%.

Second, the amendment raises new issues that would require further search given that such limitation was never previously presented in the claims.

Response to Arguments

Applicants argue that "one would not have been motivated to use the insoluble solids of Romeo et al. in the juice of Hoersten et al. because Hoersten et al. and Romeo et al. achieve a different goal." Specifically, applicants find that Hoersten et al. is directed to a liquid juice devoid of any dispersion or sediment at the bottom while Romeo et al. is directed to a paste-like sauce.

Romeo teaches a tomato product comprising 5.5-20% dry residue and 94.5-80% water. Given Romeo teaches a tomato product with 94.5% water and 5.5% dry residue, since tomato

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juice is known to comprise around 94% water (*see* USDA National Nutrient Database for tomato juice), it is clear that Romeo teaches a tomato product comprising the water and solids content of tomato juice. Therefore, given Romeo teaches a tomato product with tomato juice characteristics, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a tomato juice comprising from 0.64 to 2.5 % insoluble solids wherein the insoluble solids have a particle size of less than 0.5 mm, as taught by Romeo, as the tomato juice ingredient in the beverage of Hoersten et al., because doing so would amount to nothing more than a use of a known tomato juice product for its intended use in a known environment to accomplish entirely expected results.

Applicants explain that “Hoersten et al. explicitly discuss that a suspension or dispersion of insoluble solids does not satisfy a demand of consumer and that gritty texture and an unpleasant taste caused by insoluble solids is avoided in a liquid juice composition of Hoersten et al.”

While Hoersten et al. disclose that adding insoluble dietary fiber to liquid foodstuff can provide a gritty texture (C1/L46-49), Hoersten et al. also discloses a product made with tomato juice which inherently comprises insoluble fiber components.

Applicants explain that “the claimed vegetable drink advantageously has a less grassy odor, a less heated odor, a savory taste and improved ease of drinking.” Applicants argue that a skilled artisan would not have been motivated to combine the disclosures of Romeo et la. And Hoersten et al. for the purpose of obtaining a drink that has a less grassy odor, a less heat odor, a savory taste and improved ease of drinking.

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In this case, given modified Hoersten et al. disclose a drink composition substantially similar to that presently claimed, it is clear that the drink would intrinsically display the claimed sensory properties.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Gwartney whose telephone number is (571) 270-3874. The examiner can normally be reached on Monday - Friday; 7:30AM - 3:30PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./

Examiner, Art Unit 1794

/Keith D. Hendricks/

Supervisory Patent Examiner, Art Unit 1794